

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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IN RE: GENERAL MOTORS LLC :  
IGNITION SWITCH LITIGATION : 14-MD-2453 (JMF)

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**APPLICATION OF ROBERT C. HILLIARD FOR APPOINTMENT AS CO-LEAD  
COUNSEL**

Pursuant to Pretrial Order No. 5, Robert C. Hilliard respectfully submits this application for appointment as Co-Lead Counsel with primary responsibility for injury/wrongful death cases.

**INTRODUCTION REGARDING MR. HILLIARD AND GENERAL MOTORS**

Mr. Hilliard is uniquely qualified to serve as Co-Lead Counsel with primary responsibility for injury/wrongful death cases given his clients' substantial presence in this MDL, his early and continual involvement with this specific GM litigation, and his long career in complex tort litigation. Mr. Hilliard was personally retained by Plaintiffs who make up the most significant portion of this MDL's injury/death docket. On their behalf, he is filing into this MDL 658 post-bankruptcy cases, including 29 death cases and 629 injury cases. Mr. Hilliard will also seek leave to file into this MDL an additional 248 pre-bankruptcy cases, including 21 death cases, 136 injury cases, and 91 economic loss cases. Mr. Hilliard's filings materially affect the present litigation by substantially increasing the number of injury and death cases that make up the MDL. Separately, Mr. Hilliard intends to process at least 219 non-MDL claims through the Compensation Fund, including 35 death claims and 184 injury claims. Mr. Hilliard expects to litigate another 50 GM ignition switch cases in various state courts throughout the country.

Mr. Hilliard also brings to the MDL leadership his unique knowledge of and access to the various forums and decision makers with ongoing interest in this GM litigation. Specifically, Mr. Hilliard has worked closely with Senator Richard Blumenthal (Consumer Protection Product Safety Sub-Committee) and Representative Tim Murphy (Chairman of the House Energy and Commerce Subcommittee on Oversight & Investigations), as well as other Congressional leaders on the GM ignition switch issues. Mr. Hilliard has coordinated national efforts between Joan Claybrook (President Emeritus of Public Citizen), Clarence Ditlow (Executive Director for the Center for Auto Safety), and GM victims. The national media regularly seeks out Mr. Hilliard for informed and reliable information and reasoning on all defect-related issues.

Respectfully, no other applicant can match the professional stake Mr. Hilliard has in this MDL's injury/death docket. Mr. Hilliard offers a global perspective and depth of knowledge for the benefit of all of the Plaintiffs in this MDL, including his clients. His appointment as co-lead counsel would achieve this Court's stated objectives of "vigorous prosecution" and "strong and flexible leadership."

**MR. HILLIARD'S WORK IN THE GM IGNITION SWITCH DEFECT LITIGATION**

- As news of the defective ignition switch broke, Automotive News identified Mr. Hilliard as one of the Nation's "Key Players" in the GM defect litigation.
- GM admits that 13 deaths are directly attributable to its defective ignition switch. Mr. Hilliard represents the families of 5 of those victims.

- Mr. Hilliard successfully arranged a private meeting between GM's C.E.O., Marry Barra, and 23 of his clients in Washington, D.C. on March 31, 2014. Ms. Barra listened to the victims' stories for over two hours.
- Mr. Hilliard communicated with NHTSA Acting Administrator David Friedman and facilitated a private meeting between his clients and Mr. Friedman concerning GM.
- Subsequent to the GM recalls, Mr. Hilliard filed the first five personal injury/death cases around the country, as well as the first economic loss lawsuit in the country (*Silvas v. General Motors, LLC*, No. 2:14-CV-90 (S.D. Tex.)). Judge Nelva Gonzales Ramos (S.D. Tex.) granted Mr. Hilliard's motion requesting an Emergency "Park-It-Now" hearing. To date, this remains the only contested hearing where GM's national counsel appeared before the Court and live testimony was presented.
- Mr. Hilliard has personally and privately met with Compensation Fund Administrator, Ken Feinberg, numerous times and has exchanged dozens of phone calls and emails with Mr. Feinberg to discuss and negotiate the details of the Compensation Plan. Mr. Feinberg acknowledged Mr. Hilliard's efforts in his Press Conference announcing the plan.
- Before his docket was stayed, Mr. Hilliard drafted and sent detailed and lengthy discovery requests to GM, set depositions of critical GM witnesses, retained highly credentialed expert witnesses, and set numerous motions for hearing.
- Mr. Hilliard assisted members of the United States Congress, including Senators Blumenthal and Baldwin (Senate Commerce Committee), as well as Representative Tim Murphy (Chairman of the House Energy and Commerce Subcommittee on Oversight & Investigations), in gathering evidence for Congressional hearings related to the GM recalls. He organized private meetings with his clients and United States Senators and Representatives, and has attended every relevant Congressional and Senate hearing to date.
- Mr. Hilliard, and his associated specialty bankruptcy counsel at Goodwin Procter LLP, have actively participated in the GM bankruptcy proceedings by attending all meetings and hearings and interacting directly with attorneys representing the key parties.
- Mr. Hilliard presented proof to former Van Zandt County Texas District Attorney, Leslie Poynter Dixon, that his client Candice Anderson's felony vehicular homicide conviction for the death of Mikale Erickson was actually a result of the defective ignition switch in her GM Saturn Ion. Ms. Dixon, in a recent letter to the Texas Board of Pardons and Paroles, requested that the Governor of Texas pardon Ms. Anderson, citing GM's sole responsibility for the death of Mikale Erickson.
- Upon invitation, Mr. Hilliard has appeared on numerous national television broadcasts related to the GM story, including broadcasts for: ABC, NBC, CBS, Bloomberg, CNBC, CNN, Fox Business News, and Fox News. In addition, news media outlets regularly seek Mr. Hilliard's comments regarding GM, including, among others: The New York Times, Wall Street Journal, USA Today, San Francisco Chronicle, LA Times, Washington Post, Houston Chronicle, Huffington Post, Boston Globe, Detroit Free Press, Detroit Press, and the Associated Press.

### **MR. HILLIARD'S KNOWLEDGE AND EXPERIENCE IN PROSECUTING COMPLEX LITIGATION**

Mr. Hilliard is the Founding Partner of Hilliard Muñoz Gonzales, LLP (1984 – present) and Hilliard & Shadowen, LLP (2012 – present).

- Mr. Hilliard's firm, Hilliard & Shadowen LLP, is currently in leadership roles in the following MDLs:
  - 2014: *In re Actos End Payor Antitrust Litig.*, No. 1:13-cv-09244-RA (S.D.N.Y.) (Interim Co-Lead Counsel on behalf of consumer class plaintiffs);
  - 2014: *In re Aggrenox Antitrust Litig.*, No. 3:14 MD 2516 (SRU) (D. Conn.) (Interim Co-Lead counsel on behalf of consumer class plaintiffs);
  - 2014: *Loestrin 24 Fe Antitrust Litig.*, No. 1:13-md-02472-S (D.R.I.) (Interim Co-Lead counsel on behalf of consumer class plaintiffs);
  - 2013: *In re Nexium (Esomeprazole) Antitrust Litig.*, No. 1:12-md-02409-WGY (D. Mass.) (Co-Lead Counsel on behalf of consumer class plaintiffs);
  - 2013: *In re Niaspan Antitrust Litig.*, No. 2:13-md-02460-JD (E.D. Pa.) (Interim Co-Lead Counsel on behalf of consumer class plaintiffs);
  - 2013: *In re Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litig.*, No. 2:13-md-02445-MSG (E.D. Pa.) (Interim Co-Lead Counsel on behalf of consumer class plaintiffs).
- In 2013, Mr. Hilliard was the lead trial attorney for 15 patients killed or injured during Bristol-Myers Squibb's testing of an experimental drug for Hepatitis C. Mr. Hilliard led all filings, pre-trial matters, and negotiations and, as reported in the Wall Street Journal, successfully settled the cases for \$80 million.
- In 2013, Mr. Hilliard was Lead Counsel in the pharmaceutical product liability case, *In re: Risperdal Litigation*, against Johnson & Johnson. He tried two cases before juries in the Philadelphia County Court of Common Pleas that both settled during trial. *See Banks v. Janssen Pharmaceuticals, Inc. et al.; Bentley v. Janssen Pharmaceuticals, Inc., et al.* Mr. Hilliard led the negotiations and successfully settled over 1,500 cases for a confidential amount after taking the deposition of Johnson & Johnson's C.E.O., Alex Gorsky.
- In 2011, the Honorable Kurt Englehart (E.D. La) appointed Mr. Hilliard as one of eight attorneys to the Plaintiffs' Steering Committee in *In Re FEMA Trailer Product Liability Litigation*, MDL No. 1873. Mr. Hilliard's firm represented approximately 30,000 FEMA Plaintiffs, 98% of whom accepted the proposed settlement. Mr. Hilliard was one of the trial lawyers in the first bellwether case, *Alexander, et al. v. Gulf Stream Coach, Inc., In Re FEMA Trailer Product Liability Litigation*, MDL No. 1873 (E.D. La.).
- In 2010, the Honorable Robert Schaffer (Tex.) appointed Mr. Hilliard Texas Co-Liaison Counsel in *In Re Toyota Unintended Acceleration Litigation*, MDL No. 2010-46354.
- In 2007, Mr. Hilliard filed the first litigation in the country against Guidant Corporation for defective heart defibrillators. His deposition of Guidant's CEO, Fred McCoy, played a critical role in the resolution of the national MDL. *See In Re Guidant Corp. Implantable Defibrillators Products Liability Litigation*, MDL No. 1708 (D. Minn.).
- In 2005, the Honorable Karen Johnson (Tex.) appointed Mr. Hilliard Texas Liaison Counsel in the Ocwen MDL, *In Re Ocwen Loan Servicing, LLC Mortgage Servicing*

*Litigation*, MDL No. 07-0037, a complex litigation involving predatory lending. He also represented individual homeowners in the litigation, obtaining successful jury verdicts in Corpus Christi, Texas for \$3.5 million and in Galveston, Texas for \$10 million.

- In 2002, Mr. Hilliard served as Co-Lead Texas Class Counsel in *Haese v. H&R Block*, a class action lawsuit involving several hundred thousand Texas plaintiffs claiming that H&R Block received illegal kickbacks for its tax-preparation services. Mr. Hilliard successfully defeated H&R Block's mandatory arbitration defense and prevented H&R Block's attempts to force all Texans to participate in a \$25 million national class action settlement—an issue that was taken up on appeal. The Court of Appeals for the Seventh Circuit issued a strong opinion favorable to Mr. Hilliard's clients. *See Reynolds, et al. v. Beneficial Nat'l Bank, et al.*, 288 F.3d 277 (7th Cir. 2002). Mr. Hilliard led the negotiations and ultimately recovered in excess of \$200 million, with \$26 million of that value paid in cash to the members of the Texas state class alone.

#### **MR. HILLIARD'S ACCESS TO RESOURCES TO PROSECUTE THE LITIGATION IN A TIMELY MANNER**

Throughout his career, Mr. Hilliard has focused on complex cases, including multi-district litigation, and has cooperatively assisted co-counsel and professionally interacted with opposing counsel. Mr. Hilliard commits all necessary resources to effectively and timely prosecute cases similar to those at issue in this MDL, and has done so for decades. Between his two firms, and together with his co-counsel in the GM litigation—the Law Offices of Thomas J. Henry—Mr. Hilliard has access to over 200 attorneys and staff members, with the ability to increase personnel as required. Mr. Hilliard has also associated with Goodwin Procter LLP (as explained more fully below) to assist with any bankruptcy issues that may arise during this litigation.

Mr. Hilliard's firms have offices in Corpus Christi, Texas; San Antonio, Texas; Austin, Texas; and Mechanicsburg, Pennsylvania. Mr. Hilliard also has access to Goodwin Proctor's New York City offices for the purposes of this litigation. Mr. Hilliard and his staff have already made numerous trips to Washington, D.C., New York, Houston, Atlanta, Chicago, Nashville, Dallas, and Minneapolis directly related to this litigation.

#### **MR. HILLIARD'S KNOWLEDGE OF APPLICABLE LAW**

Mr. Hilliard has thirty-one years of experience with personal injury and product liability cases, including complex and multi-district litigation. He has prepared, filed and argued virtually every type of motion. He has argued in front of the Texas Supreme Court, as well as numerous state and federal appellate courts.

Mr. Hilliard recognizes this Court's keen interest in and attention to the GM Bankruptcy proceedings currently pending in the Southern District of New York. To ensure that this Court has continual access to expert advice concerning bankruptcy issues as well as status reports concerning the ongoing and concurrent bankruptcy proceedings that may touch this MDL, Mr. Hilliard associated with William Weintraub and Eamonn O'Hagan of Goodwin Procter LLP, both local New York City attorneys. Goodwin Procter LLP represents Mr. Hilliard's clients' interests in all bankruptcy proceedings and is assisting, monitoring and advising Mr. Hilliard on all bankruptcy-related issues. Messrs. Weintraub and O'Hagan have extensive experience in bankruptcy litigation and reorganization matters, with an emphasis on mass tort cases. Mr.

Weintraub is a Fellow of the American College of Bankruptcy and has participated in the underlying Chapter 11 case for Old General Motors, *In re Motors Liquidation Company*.

### **GENERAL CONSIDERATIONS**

- Mr. Hilliard was a 2011 Public Justice National Trial Lawyer of the Year Finalist for his pro bono representation of Koua Fong Lee, a Hmong refugee, who served three years of a six-year prison sentence for vehicular homicide in Minnesota as a result of an accident involving his runaway Toyota. Mr. Hilliard successfully led a four-day evidentiary hearing proving the sudden unintended acceleration of Mr. Lee's Toyota and culminating in Mr. Lee's immediate and permanent release from custody. All charges were dropped, and Mr. Hilliard received the Never Forgotten Award from the Innocence Project of Minnesota for his tireless work on this case.
- Mr. Hilliard recently obtained a landmark ruling from the United States Court of Appeals for the Fifth Circuit in *Hernandez v. United States*, 2013 WL 2932598 (5th Cir. 2014). For the first time in United States history, the Court held that a Mexican national, standing in Mexico, possesses Fifth Amendment constitutional rights that allow him to sue a United States Border Patrol Agent for conscience-shocking, excessive use of force across our nation's border.
- Mr. Hilliard is double board certified in Personal Injury Trial Law (1990) and Civil Trial Law (1992).
- Mr. Hilliard is an Advocate in the American Board of Trial Advocates (ABOTA), which requires 50 jury trials to verdict as lead counsel. Mr. Hilliard is also a member of the American Association for Justice (formerly ATLA) and served as Co-Chairman of its National Ethics Committee from August 1992 – July 1995. Mr. Hilliard was an instructor for the Gerry Spence Trial Lawyers College, WY (1997-2000).
- Mr. Hilliard's recent jury verdicts as lead trial attorney:
  - a. 2013: *Davila v. Premium Assets, Inc.* – \$25 million jury verdict; the top premises liability verdict in Texas in 2013. *See* <http://verdictsearch.com/verdict/security-guard-severely-beaten-when-he-confronted-intruder/>
  - b. 2012: *Chatman-Wilson v. Cabral & Coca-Cola, Enterprises, Inc.* – \$21 million jury verdict against Coca-Cola; one of the top overall verdicts in Texas for 2012. *See* <http://www.insurancejournal.com/news/southcentral/2012/05/07/246574.htm>
  - c. 2011: *Garcia v. Christus Spohn* – \$6.4 million jury verdict against Christus Spohn Medical Center; the third highest premises liability verdict in 2011. *See* <http://www.constructionwitness.com/Testimonials-News/Blog/2012/November/-6-4-million-Verdict-Woman-blamed-automaticdoor.aspx>

Pursuant to Pretrial Order 5, Mr. Hilliard would respectfully request to be heard at the August 11, 2014 hearing. Pursuant to the provisions of 28 U.S.C. § 1746, Mr. Hilliard declares under penalty of perjury that the foregoing is true and correct.

EXECUTED this 28<sup>th</sup> day of July 2014.

/s/ Robert C. Hilliard  
Robert C. Hilliard